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11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

13 Dominic Agatep,

14 Plaintiff,

15 v.

16 Citibank and DOES 1 through 100
17 inclusive,

Defendants.

CASE NO.

PLAINTIFF'S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act
3. Demand Exceeds \$25,000

18 COMES NOW Plaintiff Dominic Agatep, an individual, based on information and belief,
19 to allege as follows:

INTRODUCTION

20 1. This is an action for damages brought by an individual consumer for Defendant's
21 violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.*
22 (hereinafter "Rosenthal Act"), which prohibits debt collectors from engaging in abusive,
23 deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 14
24 U.S.C. §227, *et seq.* (hereinafter "TCPA"), which prohibits the use of automated dialing
25 equipment when making calls to consumers.

26 2. Plaintiff brings this action against Defendant Citibank (hereinafter "Citi" or "Citibank")
27 for its abusive and outrageous conduct in connection with debt collection activity.
28

1 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following
2 findings and purpose in creating the Rosenthal Act:

3 (a)(1) The banking and credit system and grantors of credit to consumers are dependent
4 upon the collection of just and owing debts. Unfair or deceptive collection practices
5 undermine the public confidence which is essential to the continued functioning of the
6 banking and credit system and sound extensions of credit to consumers.

7 (2) There is need to ensure that debt collectors and debtors exercise their
8 responsibilities to another with fairness and honesty and due regard or the rights of the
9 other.

10 (b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or
11 deceptive acts of practices in the collection of consumer debts and to require debtors to
12 act fairly in entering into and honoring such debts, as specified in this title.

13 4. While many violations are described below with specificity, this Complaint alleges
14 violations of the statutes cited in their entirety.

15 5. The TCPA was designed to prevent calls like the ones described herein, and to protect
16 the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give
17 consumers a choice as to how corporate entities may contact them and to prevent the nuisance
18 associated with automated or prerecorded calls.

JURISDICTION & VENUE

19 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §
20 227.

21 7. This venue is proper pursuant to 28 U.S.C. §1391(b).

GENERAL ALLEGATIONS

22 8. Plaintiff Dominic Agatep (hereinafter “Plaintiff”) is an individual residing in the state
23 of California, and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

24 9. At all relevant times herein, Defendant Citi was a company engaged, by the use of
25 mail, email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer
26 debt,” as defined by Cal. Civ. Code §1788.2(f).

27 10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.
28 Civ. Code §1788.2(c)

1 11. Plaintiff had taken out an unsecured loan with Defendant Citi dating back to at least
2 2015.

3 12. The loan Plaintiff took from Defendant Citi was extended primarily for personal,
4 family or household purposes and is therefore a “debt” as that terms is defined by the Calif.
5 Civil Code § 1788.2(d) of the Rosenthal Act.

6 13. Defendant Citi has been attempting to collect on a debt that originated from monetary
7 credit that was extended primarily for personal, family, or household purposes, and was
8 therefore a “consumer credit transaction” within the meaning of Calif. Civil Code § 1788.2(3)
9 of the Rosenthal Act.

10 14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant Citi
11 arising from what Plaintiff is informed and believes was a consumer credit transaction, the
12 money allegedly owed was a “consumer debt” within the meaning of California Civil Code §
13 1788.2(f) of the Rosenthal Act.

14 15. Plaintiff is informed and believes that Defendant is one who regularly collects or
15 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the
16 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in
17 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal
18 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)
19 of the Rosenthal Act.

20 16. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the
21 accounts.

22 17. Plaintiff began making payments on the loan before he became financially unable to
23 keep up with the monthly payments due to the high interest rate that was associated with the
24 loan from Defendant Citi.

25 18. Defendant Citi began contacting Plaintiff in late December of 2016 to inquire about
26 the status of the loan and to collect on the payments that were no longer being made.

27 19. Plaintiff retained counsel to assist in dealing with Citi debt and to seek some type of
28 financial relief.

29 20. Counsel for Plaintiff sent Defendant Citi a letter confirming representation of Plaintiff
30 and that Defendant was to no longer contact Plaintiff directly and that all calls/letters/collection
31 efforts were to no longer be directed at Plaintiff.

1 21. Plaintiff informed Citi that he was revoking his consent to be called on his telephone
2 on January 10, 2017.

3 22. Defendant Citi continued to contact Plaintiff between approximately February 2017 –
4 present; the type of contact was through multiple daily phone calls to Plaintiff.

5 23. Plaintiff was contacted several times a day nearly every day regarding non-payment of
6 the debt owed to Citi despite Citi being notified that Plaintiff had retained counsel to deal
7 specifically with the debt owed to Citi.

8 24. Citi's calls were frequent in nature and continued despite receiving written
9 confirmation that Plaintiff was represented by an attorney.

10 **FIRST CAUSE OF ACTION**

11 (Violation of the Rosenthal Act)
12 (Cal. Civ. Code §§ 1788-1788.32)
13 (Against Defendants and Does 1-100)

14 25. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
15 above as though fully set forth herein.

16 26. Plaintiff provided written notice that he was represented by sending Defendant a letter
17 with the name, address, and contact information of his attorney and informed Defendant that he
18 was represented.

19 27. Defendant continued to call and attempt to make contact with Plaintiff despite receiving
20 notice of representation and being informed that Plaintiff had retained counsel in an effort to deal
21 with the debt that was owed to Defendant.

22 28. The calls and communications made by Defendant to Plaintiff were not related to
23 statements of Plaintiff's account and were attempts to collect a debt.

24 29. Plaintiff received multiple calls a day from Citi from at least February 2017 – present.

25 30. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving
26 noticed that Plaintiff had retained an attorney.

27 **SECOND CAUSE OF ACTION**

28 (Violation of the TCPA)
29 (47 USC § 227)
30 (Against Defendants and Does 1-100)

31. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
32 above as though fully set forth herein.

32. Since at least about February 2017 Defendant started calling Plaintiff's cellular telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

33. Plaintiff informed Defendant that he was revoking consent to be contacted by Citi on January 10, 2017.

34. Citi called Plaintiff at least five times since Plaintiff withdrew his consent to be contacted by an automatic dialing machine.

35. Defendant would contact Plaintiff several times each day regarding payment on the accounts.

36. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver the collection messages without Plaintiff's prior express consent.

37. All calls placed by Defendant to Plaintiff utilized an “automatic telephone dialing system” as defined by 47 U.S.C. §227(a)(1).

38. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

39. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of actual damages pursuant to California Civil Code §1788.30(a), as will be proven at trial, which are cumulative and in addition to all other remedies provided for in any other cause of action pursuant to California Civil Code §1788.32.
 - b. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code §1788.30(b), which are cumulative and in addition to all other remedies provided for in California Civil Code §1788.32; and
 - c. An award of costs of litigation and reasonable attorney's fees pursuant to Cal. Civ. Code §1788.30(c).
 - d. An award of statutory damages of \$500.00 pursuant to 47 U.S.C. §227(b)(3)(B) for each and every violation.
 - e. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

SAGARIA LAW, P.C.

1 Dated: May 22, 2017

By: /s/ Scott Johnson

2 Scott Sagaria, Esq.

3 Scott Johnson, Esq.

4 Attorneys for Plaintiff

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands trial of this matter by jury.

7 **SAGARIA LAW, P.C.**

8 Dated: May 22, 2017

9 /s/ Scott Johnson

10 Scott Sagaria, Esq.

11 Scott Johnson, Esq.

12 Attorneys for Plaintiff